

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Case No. 6:07-cr-00157-RDP-RRR
 v.)
) Birmingham, Alabama
 PIERRE ERNEST FALGOUT, III) October 19, 2007
)
 Defendant.)
)

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

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1 October 19, 2007

9:43 a.m.

2 PROCEEDINGS

3 (Court called to order.)

4 THE COURT: Good morning.

5 MS. HODGE: Good morning, Your Honor.

6 MS. BURRELL: Good morning, Your Honor.

7 MR. REID: Good morning, Your Honor.

8 THE COURT: We're here in the United States of
9 America v. Pierre Ernest Falgout, III, Case No.

10 6:07-cr-00157-RDP-RRR. We're here for purposes of a consent
11 hearing inasmuch as the defendant has indicated to his
12 counsel that he wishes to withdraw his earlier plea of not
13 guilty to one or more of the counts of the superseding
14 indictment and enter a guilty plea as to certain counts in
15 the superseding indictment.

16 Is that correct, Mr. Reid?

17 MR. REID: That is, Your Honor.

18 THE COURT: All right.

19 Mr. Falgout, the withdrawal of your earlier plea of not
20 guilty to the charges in Counts 1 through 30 and Counts 43
21 and 44 will be allowed. But before I can accept a plea of
22 guilty from you with respect to those counts, I must ask some
23 questions of you and get some information from you, and that
24 will require having you placed under oath and asking those
25 questions to you.

1 While you are under oath, I'll ask you questions about
2 the plea of guilty that you are offering to the court,
3 matters relevant to the charges against you, and matters
4 related to sentencing. Just remember that any answers to the
5 questions must be full, complete, and true because a false
6 answer or a false statement could lead to the basis of a
7 separate prosecution against you.

8 Do you understand all that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. What I'll ask you to do is
11 please stand so that the courtroom deputy may administer the
12 oath to you.

13 (Defendant sworn/affirmed.)

14 THE COURT: All right. Mr. Falgout, if you and your
15 attorney would please come to the microphone. What I want to
16 do, as you are coming up, is say this to you. If you don't
17 understand something that we cover in court or if you have a
18 question about anything or you just don't hear something
19 clearly, I want you to interrupt the proceedings and let your
20 lawyer know so we can cover the matter with you and make sure
21 you understand it and hear it correctly. Okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: At the end of the hearing, I'll ask you
24 if you've understood everything we've gone over with you and
25 heard everything we've gone over with you. So it's important

1 for you to keep up with us, and if you have a question, to
2 let us know. All right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Let me get some background from you.
5 First, what is your full name?

6 THE DEFENDANT: Pierre E. Falgout, III.

7 THE COURT: And what is your date of birth?

8 THE DEFENDANT: 9-13-72.

9 THE COURT: How would you describe your educational
10 history?

11 THE DEFENDANT: I graduated high school.

12 THE COURT: Okay. Any college?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. How about employment
15 history?

16 THE DEFENDANT: I've worked most all my life, ever
17 since I got out of high school. Worked for 12 years for
18 Marathon Equipment Company.

19 THE COURT: All right. Are you able to read, write,
20 and understand the English language?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you and your attorney read,
23 complete, and sign the guilty plea advice of rights
24 certification that's been filed in with the court this
25 morning?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did you understand the information
3 on that certificate as you and your lawyer went over it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Other than with respect to the
6 provisions related to a plea agreement, did you and your
7 attorney go over all these provisions and did you answer them
8 truthfully?

9 THE DEFENDANT: Each and every one, yes, sir.

10 THE COURT: All right. And the reason that you
11 skipped over the aspects related to the plea agreement is
12 there's not a plea agreement in this case; correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 In the past 72 hours have you taken or received any
16 intoxicants, drugs, medication, prescription or otherwise, or
17 consumed any other substance that could affect your ability
18 to understand the proceedings here today?

19 THE DEFENDANT: No, sir.

20 THE COURT: And are you suffering from any mental or
21 emotional impairment, or physical injury or illness that
22 could affect your ability to understand the proceedings here
23 today?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. There was a competency

1 examination done and an order entered by Judge Armstrong in
2 this case finding the defendant competent to stand trial and
3 competent at the time of the allegations in the case; is that
4 correct?

5 MR. REID: That's correct, Your Honor.

6 THE COURT: Will the government agree to that?

7 MS. HODGE: Yes, Your Honor.

8 THE COURT: Are there any matters related that the
9 court needs to take up today? There have been no objections
10 to the report, no questions raised about the report. But I
11 thought it would be appropriate, since we are doing a consent
12 hearing, to raise that issue and make sure that we are
13 squared away on that today.

14 MS. HODGE: There are no other matters that the
15 government is aware of, Your Honor.

16 MR. REID: None, Your Honor, other than we
17 acknowledge the report as it's been submitted. We would
18 reserve the right to offer any evidence at sentencing not to
19 guilt or innocence but to mitigation.

20 THE COURT: All right. For example, a diminished
21 capacity type argument, is that what you are referring to?

22 MR. REID: Not necessarily diminished capacity, but
23 circumstances involving mitigating factors.

24 THE COURT: Okay. Matters related to mitigation?

25 MR. REID: Yes, sir.

1 THE COURT: All right. But not as to competency of
2 the defendant?

3 MR. REID: No. We would not raise the issue of
4 competency.

5 THE COURT: Mr. Falgout, do you understand what
6 we've just gone over, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. What I want to make sure you
9 understand is that one of the things that was done in this
10 case, as you remember, is you went and --

11 Was it Dr. Ackerson he saw?

12 MR. REID: Yes, sir.

13 THE COURT: All right. You went and spent some time
14 with Dr. Ackerson so she could assess a couple of things.
15 One would be whether you are competent to stand trial, and
16 that would affect also whether you are competent to enter a
17 plea today.

18 And then the second thing she wanted to look into is
19 whether or not you had the capacity at the time of the
20 alleged commission of these crimes to know the difference
21 between right and wrong and understand what you were doing
22 was wrong.

23 Do you understand the reasons she met with you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Do you have any questions?

1 Have you seen the report she's given?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Do you have any questions
4 about the report?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right.

7 Any concerns about the report? Do you have any concerns
8 about the report personally, of her findings in the report?

9 I'm sorry?

10 THE DEFENDANT: Uh --

11 MR. REID: Your Honor, if I may, there are some
12 issues in the report. We think that there are --

13 THE COURT: I'm talking about the ultimate finding.

14 MR. REID: The ultimate finding, we do not have an
15 issue with, Your Honor. I think the issues that Mr. Falgout
16 had, and he certainly could speak to those, is there are some
17 dates and some times in there that we would take issue with.

18 THE COURT: All right. Fair enough. But I'm
19 talking about the ultimate findings of the report.

20 And the reason, Mr. Falgout, the reason I asked your
21 lawyer and then you is that from time to time we have
22 defendants come into court represented by one attorney.
23 After they are convicted and sentenced, they are represented
24 by another attorney. And then they say that they told their
25 attorney something and he didn't raise it. That's why I

1 always ask the defendant too whether there are any questions
2 or concerns you have about the report at least to the extent
3 that it finds that you were competent and aware of your
4 actions at the time that these actions allegedly occurred.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand what I'm saying?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any concern about the report
9 in that respect?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Fair enough.

12 All right. Is there anything that prevents you from
13 understanding anything I'm saying to you at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: Anything that would cause you not to be
16 able to communicate with your lawyer today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you received a copy of the
19 superseding indictment that's pending against you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Reid, have you had adequate time to
22 investigate the charges made against your client and to
23 consult with him concerning those charges and concerning any
24 possible defenses he may have to the superseding indictment?

25 MR. REID: I have, Your Honor.

1 THE COURT: All right.

2 Mr. Falgout, have you had adequate time to consult with
3 your lawyer concerning the charges against you and any
4 defenses you may have to the charges against you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you fully satisfied with the
7 representation and advice you've received from your lawyer,
8 Mr. Reid, in this case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 What I want to do next is go over with you certain rights
12 that you have now but that you waive or give up if you enter
13 a guilty plea in this case. All right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: First, you are presumed to be not guilty
16 of the charges made against you in the superseding
17 indictment, and that presumption standing alone is sufficient
18 to ensure that you would not be convicted unless you either
19 plead guilty or are found guilty as part of a trial. You
20 also have a right to stand on your plea of not guilty entered
21 earlier in this case. And if you do that, you'd be entitled
22 to a trial before a duly selected jury. At any trial to be
23 conducted in this matter, you would not be convicted unless
24 the United States first proves each and every element of the
25 charges against you beyond a reasonable doubt.

1 Do you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Also throughout the proceedings prior
4 to, during, and after trial, you have the right to be
5 represented by an attorney who must be constitutionally
6 adequate. You also would be entitled to confront and
7 cross-examine each witness called by the United States, to
8 ask them questions concerning any matter that might be
9 relevant to the charges against you or your defense of those
10 charges including matters that might help the jury in
11 evaluating the credibility of any such witness.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You also have the right to call
15 witnesses on your own behalf and use the subpoena power of
16 this court to ensure that those witnesses attend court and
17 testify. You also would have a right to testify and present
18 evidence, if you wish to do so, but you may not be compelled
19 to testify. Whether you elected to testify would be a matter
20 left solely up to you. You cannot be compelled to
21 incriminate yourself or give evidence against yourself. If
22 you did elect to testify, however, you'd be placed under oath
23 and would be subject to cross examination by counsel for the
24 United States.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And all those things?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you plead guilty, you waive the right
5 not to testify. And what I mean by that is the court will
6 make certain inquiries of you. You will be expected to
7 answer the court's questions, and the court will consider the
8 information you give in response to the questions in respect
9 to deciding how the charges against you should be disposed
10 of.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, you'd also waive or give up all the
14 rights I just went over with you if you plead guilty, with
15 one exception. You do not by pleading guilty waive or give
16 up the right to have an attorney represent you throughout
17 this case. But with respect to all the other rights I just
18 enumerated for you, you waive or give those up if you plead
19 guilty in this case.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you plead guilty, the only thing
23 remaining for the court to do would be to impose a sentence.
24 There'll be no trial. You'll be guilty of the charges to
25 which you plead guilty. And with respect to the charges to

1 which you plead guilty, the end result would be the same as
2 if you went before a jury and were found guilty.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right.

6 What I want to do next is cover with you an explanation
7 of the charges and possible penalties that relate to Counts 1
8 through 30 and Counts 43 through 44. For purposes of the
9 hearing today, we are going to set aside the charges in
10 Counts 31 through 42, which the government has indicated that
11 they intend, if you plead guilty, to move to dismiss those
12 charges at sentencing.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right.

16 Counts 1 through 30 and 43 and 44 charge you with the
17 separate offenses of violating 18 United States Code Section
18 2251(a), which is sexual exploitation of minors. Those are
19 each felony charges. Before you could be found guilty of
20 those charges, the government would have to prove beyond a
21 reasonable doubt each element of each of the charges to which
22 you are pleading guilty.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right.

1 Section 2251(a) makes it a federal crime or offense for
2 anyone to knowingly employ, use, persuade, induce, entice, or
3 coerce any minor to engage in any sexually explicit conduct
4 knowing or having reason to know that such visual depiction
5 will be transported in interstate commerce or that that
6 visual depiction was produced using materials that have been
7 mailed, shipped, or transported in interstate or foreign
8 commerce by any means including by a computer. You can be
9 found guilty of those offenses only if all the following
10 facts are proved beyond a reasonable doubt.

11 First, that you knowingly employed, used, persuaded,
12 induced, enticed, or coerced a minor to engage in any
13 sexually explicit conduct as charged.

14 Second, that you did so for the purpose of producing any
15 visual depiction of such conduct as charged.

16 And, third, that you knew or had reason to know that such
17 visual depiction would be transported in interstate commerce,
18 or that the visual depiction was produced using materials
19 that had been mailed, shipped, or transported in interstate
20 or foreign commerce by any means including by a computer, as
21 charged in the superseding indictment.

22 Now, to be sure you understand this, with respect to each
23 one of those counts, the government would have to prove each
24 one of those things to convict you on that count.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What I want to do next is give you some
3 more information that defines some of the terms that have
4 been used in those elements that I just gave you.

5 A minor means any person under the age of 18 years of
6 age. The term "sexually explicit conduct" means actual or
7 simulated sexual intercourse, including genital to genital,
8 oral to genital, anal to genital, or oral to anal conduct,
9 whether between persons of the same or opposite sex,
10 bestiality, masturbation, sadistic or masochistic abuse, or
11 lascivious exhibition of the genitals or pubic area of any
12 person.

13 Do you understand all that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that in evaluating
16 whether something is sexually explicit conduct, the jury
17 would consider the overall content of the material and also
18 consider such factors as to whether the focal point of the
19 visual depiction is on the minor's genital or pubic area or
20 whether there is some other focal point.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The term "producing" means producing,
24 directing, manufacturing, issuing, publishing, or
25 advertising.

1 The term "visual depiction" includes undeveloped film and
2 videotape and data stored on a computer disk or by other
3 electronic means which is capable of conversion into a visual
4 image.

5 And the term "child pornography" means any visual
6 depiction including any photograph, film, video, picture, or
7 computer or computer generated image or picture whether made
8 or produced by electronic, mechanical, or other means of
9 sexually explicit conduct.

10 Do you understand all that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The term "interstate or foreign
13 commerce" means the movement of the property from one state
14 to another state or from one state to another country, or
15 vice versa.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The term "computer" means any
19 electronic, magnetic, optical, electrochemical, or other high
20 speed data processing device, performing logical, arithmetic,
21 or storage functions, and includes any data storage facility
22 or communications facility directly related to or operating
23 in conjunction with such device, but it does not include an
24 automated typewriter or typesetter or portable hand-held
25 calculator or some device like that.

1 Do you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The term "knowingly" means that the act
4 was done voluntarily and intentionally and not because of a
5 mistake or accident.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The word "willfully" means that the act
9 was committed voluntarily and purposely with the specific
10 intent to do something the law forbids with either bad
11 purpose to disobey or disregard the law.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And you've discussed these
15 charges and the allegations the government has made with your
16 lawyer; correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And you walked through each
19 of those with your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand the charges made
22 against you based upon the court's explanation of them today
23 and your review of them with your attorney. Is that fair to
24 say?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. There's no plea agreement in
2 this case, but I want to ask you a few questions about
3 related matters.

4 In this case you've indicated you wish to enter a guilty
5 plea to certain counts. Other than the government's
6 indication to you and the court that it would dismiss the
7 charges in Counts 31 through 42 at sentencing, has anyone
8 made any promise or assurance to you to cause you to plead
9 guilty in this case?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right.

12 Now, the government hasn't made any promise or assurance
13 other than perhaps that. Is that fair?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: No one else has made any promise or
16 assurance to you. Is that fair?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Next what I want to do is
19 cover with you the penalties that apply to a conviction under
20 these counts. Under section 2251(a) -- and each count that
21 you're pleading guilty to or indicated you desire to plead
22 guilty to is under that code section -- each separate offense
23 carries with it a fine of not more than \$250,000, custody of
24 not less than 15 nor more than 30 years, a supervised release
25 term of any term of years up to life, and an assessment fee

1 of \$100 for each count.

2 Do you understand all that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is the government seeking any
5 restitution in this case?

6 MS. HODGE: At this time, Your Honor, we would like
7 to reserve the issue of restitution closer to sentencing so
8 that we can more completely evaluate as far as what sort of
9 costs may have been incurred and what sort of assistance the
10 victims may have already received.

11 THE COURT: All right.

12 MS. HODGE: There is no agreement, however, as to --

13 THE COURT: As to restitution?

14 MS. HODGE: -- restitution, yes, sir.

15 THE COURT: The main thing I need to tell you, Mr.
16 Falgout, about that is that's something the court will have
17 to take up at sentencing, if you plead guilty today and I
18 accept that plea, whether some restitution to those damaged
19 by your conduct or hurt by your conduct would be appropriate.
20 And there are certain rules that I have to follow in
21 assessing restitution.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you had any prior convictions of
25 any offenses like this before?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. Do you realize that if you
3 have and that's discovered at or before the time of
4 sentencing and the government gives notice of that, then
5 there may be an enhancement that would apply to these
6 penalties that we've talked about?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I take it that the government knows
9 of nothing to suggest that Mr. Falgout has had any prior
10 convictions along these lines. Is that fair?

11 MS. HODGE: Yes, Your Honor.

12 THE COURT: All right.

13 Here's what I'm going to do with that subject. And I
14 don't intend to cover it in colloquy today because it looks
15 like it would be unnecessary. And I take it that if there
16 was a conviction out there, the government would probably
17 know of it at this point. But if for some reason a
18 conviction is discovered, then what I would ask the
19 government to do, if it intends to rely upon that, is to give
20 appropriate notice to the defendant, and then we would just
21 come back in and see if the plea of guilty still goes
22 forward.

23 MS. HODGE: Yes, sir.

24 THE COURT: All right? That's how we'll handle
25 that.

1 MS. HODGE: Yes, sir.

2 THE COURT: All right. A couple more things I want
3 to ask you about sentencing factors just to make sure you
4 understand this. Are you aware that the court is bound by
5 mandatory minimum and mandatory maximum statutory terms that
6 we cover? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand on top of that, or
9 within that, the sentencing guidelines will establish a
10 guideline range for the offense conduct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you talked about the guidelines
13 with your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that the court isn't
16 bound to apply them but must consider them and take them into
17 account on the issue of the appropriate range of sentencing?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand the process that's
20 involved with that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: A presentence report will be done by the
23 probation office. You will have an opportunity to object to
24 it if you disagree with it. I'll resolve any differences the
25 parties have regarding the presentence report and the

1 guideline range at the time of sentencing. And then
2 ultimately I'll have to determine what a reasonable sentence
3 would be. It could be a sentence within the guideline range.
4 It could be a sentence below it or above it.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that there's no
8 deal that you have with the government or anyone else,
9 including me, about what the sentence would be in this case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You are willing to take your chances at
12 sentencing, is that what you are telling me?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 Do you understand that while your lawyer can certainly
16 give you good advice, he's an excellent attorney, about the
17 appropriate range of sentence, he can't employ a crystal ball
18 to determine exactly what the sentence range would be or
19 exactly what the sentence would be in this case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And if the actual sentence is different
22 from any estimate that you and he have considered or that
23 someone else has suggested to you or that you have come up
24 with on your own, that would not be the basis for setting
25 aside the guilty plea you are in the process of entering.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone threatened or coerced you in
4 any way to cause you to plead guilty today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty because you are
7 in fact guilty of the counts that still remain with respect
8 to your plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 Let me ask Mr. Reid and Ms. Hodge, are each of you
12 satisfied that the defendant fully understands the charges
13 against him and the consequences of entering the plea of
14 guilty?

15 MS. HODGE: The government is satisfied.

16 MR. REID: I'm satisfied, Your Honor.

17 THE COURT: All right.

18 Mr. Reid, are you satisfied that he's knowingly and
19 voluntarily entering a guilty plea?

20 MR. REID: I am, Your Honor.

21 THE COURT: Ms. Hodge, do you know of anything that
22 suggests that's not the case?

23 MS. HODGE: No, sir, I don't.

24 THE COURT: All right.

25 Mr. Falgout, what I want you to do next is listen

1 carefully to Ms. Hodge as she is going to outline both for
2 you and for me some of the evidence she would offer to a jury
3 if this case were to go to trial.

4 Ms. Hodge, what would the government expect to prove
5 beyond a reasonable doubt if this case were to proceed to
6 trial?

7 MS. HODGE: The government would expect to prove
8 that on December 7, 2006, Lamar County Sheriff's Department
9 executed a search warrant at the defendant's residence
10 located at 1011 Austin Road, Vernon, Alabama. Among items
11 found in the search were two Sony memory sticks and an
12 8-millimeter Panasonic videotape.

13 The contents of the memory sticks were reviewed and
14 proved to be images of child pornography. The images on the
15 memory sticks charged in Counts 1 through 30 and Count 43
16 depict four minor boys engaged in sexually explicit conduct.
17 These pictures were taken from approximately December 31 of
18 2004 through January 30 of 2006. The more specific dates for
19 each count are more fully set out in the indictment.

20 The children pictured in these images will be referred to
21 by initials. The first is T.A. His date of birth is
22 December 22, 2003. The second is B.G., date of birth
23 March 8, 2001. The third is G.H., date of birth October 9,
24 2002. And the fourth is M.H., date of birth August 27, 2004.

25 The contents of the video, which is Count 24 of the

1 indictment, were reviewed and showed a minor child, T.A.,
2 engaged in sexually explicit conduct. This video was made
3 sometime between August of 2005 and November 30 of 2006, a
4 more specific date being unknown to the grand jury.

5 Also recovered during the search warrant in the
6 defendant's truck was a digital camera that produced some of
7 the images on the memory sticks. This was established by the
8 metadata contained on the camera and left in the images
9 produced by that camera.

10 Additionally, a video camera capable of producing the
11 8-millimeter videotape was recovered. It was found in the
12 same camera bag as the memory sticks.

13 The photographs charged in Counts 1 through 30 and Count
14 43 were made at the defendant's residence as well as inside
15 the defendant's truck. In one of the photographs the
16 defendant's legs and some boxer shorts can be seen. The same
17 boxer shorts were recovered during another search warrant,
18 which was executed on December 15, 2006.

19 The video charged in Count 44 was made at the defendant's
20 parent's residence in Vernon, Alabama. The defendant can be
21 heard yelling at T.A. throughout the video. At one point in
22 the video the camera shows the defendant's boots, which had a
23 distinct yellow instep. These boots were recovered during
24 the December 15th search warrant at the defendant's
25 residence.

1 One of the Sony memory sticks was made in Japan and
2 traveled in interstate and foreign commerce. The other
3 memory stick was made in Korea and traveled in interstate and
4 foreign commerce. The 8-millimeter Panasonic videotape was
5 not manufactured in the state of Alabama and therefore
6 traveled in interstate commerce to get to the state of
7 Alabama.

8 All of the above-described conduct occurred in the
9 Northern District of Alabama.

10 THE COURT: All right. Thank you, Ms. Hodge.

11 Mr. Falgout, you heard Ms. Hodge briefly outline the
12 facts the government expects to prove at trial. Are those
13 facts substantially correct?

14 THE DEFENDANT: Yes, sir, they are.

15 THE COURT: Did you hear her say anything that was
16 incorrect?

17 THE DEFENDANT: No, sir.

18 THE COURT: Did you do the things she said you did?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did you know you were violating the
21 law when you did those things?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. We're near the end of the
24 hearing today. What I want to make sure you understand is
25 that you are not required to plead guilty. You've indicated

1 through your lawyer a desire to plead guilty. And we've held
2 the hearing for that purpose so I can evaluate whether it
3 would be appropriate to accept a guilty plea from you with
4 respect to Counts 1 through 30 and 43 and 44. I am inclined
5 at this point to accept the guilty plea if you desire to
6 offer one.

7 Again, you are not required to plead guilty even at this
8 point. If you decide that you desire to plead not guilty, I
9 would allow you to reinstate your plea of not guilty. We
10 would keep the case set for trial, as it is set on the 29th
11 of this month. We'd have a jury panel come in, strike a
12 jury, and put the government to the test of seeing if they
13 could prove these allegations beyond a reasonable doubt.

14 Do you understand that you still have those rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that all the rights I
17 just went over with you at the beginning of the hearing would
18 be restored to you and you'd still have those rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you heard anything here today that
21 causes you to want to reconsider your decision to plead
22 guilty in this case?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you understand this is your last
25 chance, so to speak? In other words, while I'd allow you to

1 reinstate a plea of not guilty today, after I accept a plea
2 of guilty from you, you would not be free to go back and
3 change that plea. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you heard everything we've gone
6 over with you today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you understood everything we've
9 gone over with you today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Does the United States attorney's office
12 know of any reason I should not permit the defendant to plead
13 guilty?

14 MS. HODGE: No, Your Honor.

15 THE COURT: Do you think there's anything else we
16 need to cover before I accept the defendant's plea?

17 MS. HODGE: No, sir.

18 THE COURT: Mr. Reid, do you know of any reason why
19 I should not permit your client to plead guilty?

20 MR. REID: I know of none, Your Honor.

21 THE COURT: Do you know of anything else that we
22 need to cover before I ask him what his plea is?

23 MR. REID: No, Your Honor.

24 THE COURT: All right.

25 Mr. Falgout, are you ready to go forward with your plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. You are charged, as I said,
3 in separate counts, Counts 1 through 30 and 43 and 44 with a
4 violation of 18 United States Code Section 2251(a), sexual
5 exploitation of minors. How do you plead to each of those
6 counts?

7 THE DEFENDANT: Guilty, Your Honor.

8 THE COURT: Do you plead guilty to each of those
9 counts separately and individually?

10 THE DEFENDANT: Each and every one.

11 THE COURT: All right. And do you understand that
12 you are not pleading guilty to Counts 31 through 42?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And I've not changed your
15 plea on those. We'll leave those again to decide until the
16 sentencing hearing when the government indicates that it
17 desires to move to dismiss those.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Very well.

22 The court makes the following findings with respect to
23 the defendant's pleas. With respect to Counts 1 through 30
24 and 43 and 44, the court finds the defendant is fully
25 competent and capable of entering an informed plea. In doing

1 that, the court has reviewed Dr. Ackerson's report and Judge
2 Armstrong's order and finds that Judge Armstrong was correct
3 in finding the defendant competent and capable of going to
4 trial and/or entering an informed plea.

5 Second, the court finds the defendant is aware of the
6 nature of the charges and the consequences of his plea.

7 And, third, the plea of guilty is a knowing and voluntary
8 plea supported by an independent basis in fact containing
9 each of the essential elements of the offense. The plea is
10 therefore accepted and the defendant is now adjudged guilty
11 of the offenses charged in Counts 1 through 30 and 43 and 44
12 in the superseding indictment.

13 Now, the probation office will need a period of time to
14 complete the presentence investigation report. Once that
15 report is disclosed to the defendant and his attorney,
16 they'll be allowed 35 days to review the report. I'll enter
17 an order setting a sentencing hearing about three and a half
18 to four months from now.

19 And I can understand, counsel for the government, we'll
20 just kind of see where you are in terms of your health issues
21 and child-bearing and child-caring, and I'll be flexible with
22 both sides in setting the sentencing hearing. We'll get a
23 date out, and we'll just see where we are when we get close
24 to that date.

25 MS. HODGE: Yes, sir.

1 THE COURT: All right. Any objections to the
2 presentence report must be filed in writing with the clerk of
3 court within 14 calendar days from the receipt of the report
4 with a copy of the objections served on the probation office,
5 and I'll reserve the right not to consider any objections
6 that are not timely made unless someone can give a good
7 reason for not complying with my instructions.

8 Does everyone understand that?

9 MS. HODGE: Yes, sir.

10 MR. REID: Yes, sir.

11 THE COURT: All right. Bond is not an issue. The
12 defendant remains in custody.

13 Is there anything further from the government at this
14 time?

15 MS. HODGE: No, Your Honor, there's not.

16 THE COURT: Anything further from the defendant?

17 MR. REID: No, Your Honor.

18 THE COURT: All right. Mr. Falgout, I'll see you
19 back at sentencing, sir.

20 THE DEFENDANT: Thank you, Your Honor.

21 (Concluded at 10:26 a.m.)

22 * * *

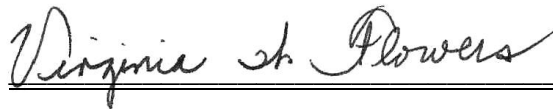
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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.



6-26-08

Virginia W. Flowers, RPR

Date